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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,450	12/30/2003	Richard L. Boyd	286336.150US1/NOR-011CP2	2366

7590 11/28/2005

Shann Kerner, Ph.D.  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109

EXAMINER
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BELYAVSKIY, MICHAEL A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/748,450

Applicant(s)

BOYD, RICHARD L.

Examiner

Michail A. Belyavskyi

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 15-23, 25-33, 35-60, 63-68 and 72-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 15-23, 25-33, 35-60, 63-68 and 72-76 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10/748,450

EXAMINER
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Belyavskyi

ART UNIT	PAPER
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1644

111705

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

1. Applicant's election with traverse of Group IV, claims 15, 30-33, 35, 36, 39-42 and 76 in the Response filed on 09/23/05 is acknowledged.

2. Applicant's response is not fully responsive to the prior Office Action filed 08/25/05, because of the following:

In the prior Office Action it was stated :

Applicant is further required under 35 USC 121 (1) to elect a single disclosed species to which the claims would be restricted if no generic claim is finally held to be allowable and (2) to list all claims readable thereon including those subsequently added.

3. In any one of the Group I- V is elected, applicant is required to elect a specific method for improving a patient's immune response wherein : (i) a specific of vaccine antigen is selected from the group recited in claim 45; (ii) a specific vaccine is selected from the group recited in claim 63; (iii) specific cytokine is selected from the group recited in claim 67; (iv) specific growth factor is selected from the group recited in claim 68 or 69.

These species are distinct because the methods for improving a patient's immune response wherein (i) a specific of vaccine antigen is selected from the group recited in claim 45; (ii) a specific vaccine is selected from the group recited in claim 63; (iii) specific cytokine is selected from the group recited in claim 67; (iv) specific growth factor is selected from the group recited in claim 68 or 69 differ with respect to the use of specific vaccine antigen, specific vaccine, specific cytokine and specific growth factor ; thus each specific method employing a of specific vaccine antigen, specific vaccine, specific cytokine and specific growth factor represents patentably distinct subject matter. Furthermore, the examination of (i) a specific of vaccine antigen is selected from the group recited in claim 45; (ii) a specific vaccine is selected from the group recited in claim 63; (iii) specific cytokine is selected from the group recited in claim 67; (iv) specific growth factor is selected from the group recited in claim 68 or 69 in the method for improving a patient's immune response would require different searches in the scientific literature.

In addition, if applicant elects Group IV, then applicant is required to elect from the following as well:

4. If Group IV is elected, applicant is further required to elect: (i) a specific method for improving a patient's immune response wherein specific pharmaceutical is, for example, selected from the Groups recited in Claims 40 or 41 or 42.

These species are distinct because the methods for improving a patient's immune response wherein specific pharmaceutical is, for example, selected from the Groups recited in 40 or 41 or 42 differ with respect to the use of specific pharmaceutical; thus each specific method employing a specific pharmaceutical represents patentably distinct subject matter. Furthermore, the examination of specific pharmaceutical such as ones recited in the Claims 40 or 41 or 42 in the method for improving a patient's immune response would require different searches in the scientific literature.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

5. Applicant is advised that the response to this requirement to be complete must include an election of the species as it reads on each species election set forth above to be examined even though the requirement may be traversed.

Since the above -mention submission appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD OF (1) MONTH OR THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michail Belyavskiy whose telephone number is 571/ 272-0840. The examiner can normally be reached Monday through Friday from 9:00 AM to 5:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571/ 272-0841.

The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michail Belyavskiy, Ph.D.  
Patent Examiner  
Technology Center 1600  
November 17, 2005

